

## **Part 2825      Rules of Procedure**

### **Part 2825      Chapter 1: Disciplinary Proceedings**

*Rule 1.1 Scope.* The following Rules of Procedure apply to all Registered Nurses (RNs), Licensed Practical Nurses (LPNs), Advanced Practice Registered Nurses (APRNs), and Certified Clinical Hemodialysis Technicians (CCHTs) licensed by the Mississippi Board of Nursing (hereinafter, “the Board”) and all other persons under the jurisdiction of said Board.

*Rule 1.2 Definitions.* For the purpose of Part 2825, Chapter 1 only, the following terms have the meanings indicated:

- A. “Board” means the Mississippi Board of Nursing.
- B. “Mississippi Nursing Practice Law” means Sections 73-15-1, *et seq.*, of the Mississippi Code of 1972, Annotated.
- C. “Licensee” means any individual licensed to practice by the Board as a Registered Nurse, Licensed Practical Nurse, Advanced Practice Registered Nurse, or Certified Clinical Hemodialysis Technician in the State of Mississippi.
- D. “Respondent” means a licensee or applicant against whom the Board has initiated a disciplinary proceeding.
- E. “Complaint Counsel” means the attorney retained by the Board to prosecute licensees pursuant to the Mississippi Nursing Practice Law.
- F. “Executive Director” means the chief executive officer or other designee employed by the Board to run the day to day operations of the Board.
- G. “Case Review Committee” means an inter-departmental committee of Board staff assembled for the purpose of determining whether to pursue disciplinary action against a licensee or applicant.
- H. “Informal Conference” means an informal review or meeting at any time prior to the Board entering any order with respect to the complaint between the case review committee or Board and the Respondent or legal representative to fully explore the issues involved in the complaint and to facilitate the disposition of the complaint.
- I. “Board Hearing Panel” means the three-member panel of the Board designated to hear disciplinary proceedings. Members of the Board shall be designated to sit on a Board Hearing Panel on a rotating basis.
- J. Masculine terms used in this Chapter shall also be deemed to include the feminine.

*Rule 1.3 Investigations.*

- A. Upon receipt of a complaint concerning a nurse’s compliance with standards of conduct or the laws and regulations governing the practice of nursing, the Board investigative

staff, with advice and consultation from the legal staff, shall make an initial determination as to whether the information justifies further investigation. A case may be dismissed without further investigation based on a determination of either:

- 1) Lack of jurisdiction; or
  - 2) No violation of the Mississippi Nursing Practice Law.
- B. An investigation may be initiated by the Board either:
- 1) In response to a written complaint or adverse information received by the Board; or
  - 2) Based on information independently developed by the investigative staff of the Board.
- C. During an investigation, the investigative staff may interview and take the statements of witnesses and licensees. During the interview of a licensee, the investigative staff shall inform the licensee of the nature and purpose for the investigation and, if requested, provide licensee with a copy of any written complaint provided that:
- 1) Any identifying information of any patient shall be removed, and/or
  - 2) If anonymity has been requested all identifying data of the complainant shall be removed.
  - 3) Disclosure of the complaint may not impair, impede, or compromise the efficacy or integrity of the investigation of the complaint.

#### *Rule 1.4 Results of Formal Investigation.*

- A. Upon completion of the formal investigation, the Case Review Committee shall determine whether there is reasonable cause to believe that a violation exists of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- B. If the complaint does not warrant the issuance of a formal complaint, the Board:
- 1) Shall dismiss the complaint; and
  - 2) May notify the Complainant and Respondent of the decision.
- C. If a complaint is not dismissed, the complaint may be resolved by a consent order or other informal disposition and/or formal complaint.

#### *Rule 1.5 Informal Proceedings.*

- A. At any time, any matter before the Board may be resolved through informal proceedings by stipulation, agreed settlement, or agreed order of dismissal. Any proposed settlement or agreement must be approved by the Hearing Panel upon a majority vote of those qualified to vote, and must be approved further by the Respondent, upon a knowing and intentional waiver by the Respondent of his right to a hearing. This process may occur at any time prior to the Board entering any order with respect to the complaint. Informal

proceedings may be conducted in person via informal conference, by attorney, or by electronic, telephonic, or written communication.

- B. Informal Conferences include an informal review or meeting between the Case Review Committee, Board or Board designee or Board Hearing Panel and the Respondent or Respondent's legal representative to fully explore the issue(s) involved in the complaint and to facilitate the disposition of a complaint. No prejudice shall be attached to the Respondent or licensee for failure to attend an informal conference.
  - 1) Respondent shall have a right to be represented by an attorney of record. At any time during the informal settlement conference, should Respondent choose to obtain representation by an attorney and advises staff of such choice, the conference will be discontinued.
  - 2) Respondent and staff participation in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. Respondent will be expected to answer questions concerning the allegations contained in the complaint or formal charges and to cooperate fully with the Case Review Committee.
  - 3) Exchange of information may take place during the Informal Conference.
  - 4) If the parties to an Informal Conference are unable to reach a mutually agreeable Agreed Order and the matter is to proceed to a hearing before the Board Hearing Panel, the parties may agree in writing by stipulation to the following:
    - (a) Any undisputed claims, facts, testimony, documents or issues; and
    - (b) Evidence to be introduced without objection.
- C. No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case or action based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending complaint or disciplinary or licensure action.

*Rule 1.6 Commencement of Disciplinary Proceedings.*

- A. If a complaint is not resolved informally or the Board determines that a complaint warrants the issuance of a formal complaint, Board staff may commence disciplinary proceedings by filing formal charges. Electronic signatures shall be permissible on a formal complaint.
- B. The Respondent shall be notified of the hearing at least fifteen (15) days in advance of the date set for the hearing. The notice of hearing shall set forth the charges and allegations against Respondent in sufficient detail so as to provide full disclosure and notice of all violations of the Nursing Practicing Act and its implementing rules and regulations.
- C. The Board's staff shall serve the Complaint and Notice of Hearing on Respondent by:
  - 1) Certified mail, postage pre-paid, to the last known address of the licensee;

- 2) Personal service; or
  - 3) When personal service of process by certified mail or personal service of process cannot be effected, by publication of a notice of hearing for three (3) successive weeks in the newspaper published in the county in which the Respondent last practiced or in the county in which the Respondent last resided according to the records of the Board, the date of hearing to be no less than ten (10) days after the last date of the published notice.
- D. The Respondent may file a response to the notice of hearing, but is not required to do so. Any written response to the charges must be filed with the Board ten (10) days in advance of the date set for the hearing on the complaint.
- E. The Respondent may waive a hearing on the notice and complaint. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Board.
- F. Formal charges may be resolved by agreement of the parties at any time.
- G. All pleadings, motions, or other papers permitted or required to be filed with the Board in connection with a pending disciplinary proceeding shall be filed by personal delivery at the Board or by certified mail to the office of the Board.
- H. Following service of a Complaint and Notice of Hearing pursuant to this Rule, a Respondent who is represented by legal counsel with respect to the disciplinary proceeding shall personally or through such counsel, give written notice to the Board of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the a withdrawal of counsel is filed with the Board.

*Rule 1.7 Pre-Hearing Procedures.*

- A. *Continuances.* Hearings shall be held before the Board Hearing Panel at the time and place designated in the Complaint and Notice of Hearing unless the Board grants a continuance. A motion for a continuance must be filed with the Board at least fifteen (15) days prior to the scheduled hearing or upon a showing of good cause at any time prior to the hearing.
- 1) No more than two (2) continuances of the hearing will be granted without the approval of the Board or Board's designee for good cause.
  - 2) A request for continuance, including to retain counsel, submitted less than five (5) days prior to the hearing may be made only under unusual circumstances. In such event, a request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.
- B. *Subpoenas.* For the purpose of disciplinary hearings, the Board acting by and through its legal staff may subpoena persons and papers on its own behalf and on behalf of a Respondent.

- 1) Before the Board will issue any subpoena on behalf of a Respondent, the Respondent shall file with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all persons to be subpoenaed and/or a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.
- 2) All requests for the issuance of subpoenas shall be filed with the Board at least fifteen (15) days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of said subpoenas issued after the aforementioned deadline.
- 3) All subpoenas issued by the Board either on its own behalf or on behalf of a Respondent shall be effected by certified mail or by personal service of process.
- 4) All subpoenas issued by the Board shall be returnable within ten (10) days to either the Board or other location as specified in the subpoena.
- 5) The Board shall charge a Respondent a reasonable fee, not to exceed \$25.00 per subpoena, for preparation and mailing of subpoenas.

*C. Disclosure.*

- 1) Upon written request by a Respondent or his counsel, Complaint Counsel of the Board shall disclose and permit Respondent or his counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Board or the existence of which is known to the Complaint Counsel:
  - (a) Names and addresses of all witnesses proposed to be called in Complaint Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
  - (b) Copies of any written or recorded statement of Respondent and the substance of any oral statement made by Respondent.
  - (c) Copies of any criminal record of Respondent, if proposed to be used.
  - (d) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
  - (e) All records, documents, physical evidence, or photographs which may be offered as evidence.
  - (f) Any exculpatory material concerning the Respondent.
- 2) The Board shall charge a Respondent a reasonable fee, not to exceed fifty cents (\$0.50) per page, payable in advance of delivery of copied documents. Copies printed on both sides (front and back) shall be considered as two (2) pages for copy charge purposes.
- 3) The Board may deny disclosure authorized by this Rule:
  - (a) If it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary embarrassment

resulting from such disclosure which outweighs any usefulness of the disclosure to Respondent or his counsel.

(b) In accordance with applicable statutory regulations providing exemptions, including but not limited to:

1. MS ST § 25-61-12 and
2. MS ST § 73-52-1.

4) If Respondent requests disclosure under this Rule, Respondent shall within two (2) days after disclosure by Complaint Counsel, permit Complaint Counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of Respondent or his counsel or the existence of which is known to Respondent or his counsel:

- (a) Names and addresses of all witnesses proposed to be called in Respondent's defense, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
- (b) All records, documents, physical evidence, or photographs which may or shall be offered as evidence in Respondent's defense.
- (c) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.

5) No depositions shall be taken in preparation for matters to be heard before the Board.

D. *Amendment of Pleadings.* Complaint Counsel may amend a Complaint and Notice of Hearing that has been duly served upon Respondent at any time prior to the scheduled hearing date, provided the amendment is for the purpose of correcting a clerical error or clarifying facts set forth in the Complaint and Notice of Hearing. Complaint Counsel may amend a Complaint and Notice of Hearing to add additional charges or counts provided the amended Complaint and Notice of Hearing is served upon Respondent not less than fifteen (15) days before the scheduled hearing date or by mutual agreement of the parties.

E. *Pre-Hearing Motions.* All pre-hearing motions shall be filed not later than ten (10) days prior to the scheduled hearing. Said motion shall be accompanied by a memorandum setting forth a succinct explanation of the grounds on which relief is sought. Any such memorandum may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or Board designee. A motion may be accompanied by an affidavit(s) as necessary to establish facts alleged in support of the motion. Within ten (10) days of the filing of any motion, opposing counsel may file a memorandum in opposition to the initial motion. Any such memorandum in opposition may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or designee.

- F. *Procedural Decisions.* The Board designee will be fully authorized to make all necessary procedural decisions on behalf of the Board, including, but not limited to, matters related to continuances, time extensions, amendments, pre-hearing conferences.

*Rule 1.8 Formal Hearing*

- A. Formal hearings are conducted pursuant to MS ST § 73-15-31 before a Board Hearing Panel that consists of three (3) Board members, an alternate Board member, and a representative of the Mississippi Attorney General's Office who serves as the presiding officer for each hearing. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Board.
- B. At a formal disciplinary hearing, Complaint Counsel and Respondent and/or Respondent's counsel shall have opportunity to present evidence on all issues of fact and argument on all issues of law, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the matter.
- C. The Board Hearing Panel is not bound by strict rules of evidence, but all determinations made by the Board Hearing Panel must be based upon clear and convincing evidence. The representative of the Mississippi Attorney General's Office, in his capacity as presiding officer of the Board Hearing Panel, shall rule on all evidentiary questions.
- D. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, MS ST § 25-41-1, et seq. In all disciplinary hearings before the Board Hearing Panel, the record of the case shall include:
- 1) The Complaint and Notice of Hearing;
  - 2) All pleadings, motions, and rulings issued;
  - 3) Evidence received or considered at the hearing;
  - 4) Offers of proof, objections, and rulings thereon; and
  - 5) The Board's order or other disposition made by the Board.
- E. Disciplinary hearings before the Board shall be conducted in the following order:
- 1) Opening statements
  - 2) Complaint Counsel's case in chief
  - 3) Respondent's case in chief
  - 4) Complaint Counsel's rebuttal
  - 5) Closing statements
- F. Questioning of witnesses shall be conducted in the following order:
- 1) Direct examination
  - 2) Cross examination
  - 3) Redirect examination

- G. The hearing officer shall have the authority to preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process and an efficient and orderly hearing and resolution of the case.
- H. The Board Hearing Panel shall render its Order, setting forth Findings of Fact, Conclusions of Law, and Order. Although the Board Hearing Panel's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order. A copy of such order shall be sent to Respondent via certified mail at his last known address or served personally upon Respondent. The decision of the Board Hearing Panel revoking, suspending, or otherwise disciplining Respondent's license shall become final thirty (30) days after the Executive Director signs the Final Order of the Board Panel unless within said period the Respondent appeals the decision to the Full Membership of the Board as provided by Rule 1.10.
- I. If the Board Hearing Panel finds in its discretion the public health, safety or welfare imperatively requires emergency action, it may order the decision revoking, suspending, or otherwise disciplining Respondent's license be immediately applied to Respondent's license.

*Rule 1.9 Appeal of Administrative Denial.* The procedural requirements enumerated in Rules 1.1 through 1.11 shall also apply to an appeal of an Administrative Denial of Licensure put forth by any applicant for licensure as a RN, LPN, APRN, or CCHT. Any applicant who wishes to appeal an Administrative Denial shall deliver a Notice of Appeal of Administrative Denial to the Board either personally at or via certified mail to the Board's office. The applicant must file his Notice of Appeal of Administrative Denial of Licensure in writing along with a \$50.00 appeal fee within thirty (30) days of notice of Board-ratification of the Administrative Denial of Licensure. Any appeal of an Administrative Denial will be set for hearing before a Board Hearing Panel at the next available hearing date on the Board's calendar after the Board receives the applicant's Notice of Appeal of Administrative Denial.

*Rule 1.10 Appeal of Board Hearing Panel Decision to Full Membership of the Board.* Appeals from any decision of a Board Hearing Panel shall be made to the Full Membership of the Board, pursuant to MS ST § 73-15-31, except as set forth in MS ST § 93-11-153, 93-11-163, and 37-101-291.

- A. *Procedures for Appeal of Board Hearing Panel Decision:* Any Respondent who appeals a decision of the Board Hearing Panel must file his Notice of Appeal of the Board Hearing Panel's decision in writing along with a fifty dollar (\$50.00) appeal fee within thirty (30) days of the Executive Director signing the Final Order of the Board Panel. Notice of the Hearing Panel's decision occurs on the date the order of the Board Hearing Panel is mailed via certified mail to or personally served upon the Respondent.



- 1) Within seven (7) days after filing his Notice of Appeal, the Respondent/Appellant shall serve on the court reporter a written request for the transcript of the hearing that resulted in the appealed decision. Respondent/Appellant shall be responsible for the cost of the preparation of said transcript. In his request for the transcript, Respondent/Appellant shall request that the court reporter notify the Board's legal staff when the transcript has been completed. Respondent/Appellant shall simultaneously file with the Board a copy of the written request for said transcript.
  - 2) Within sixty (60) days after the court reporter mails a copy of the transcript to Respondent/Appellant, Respondent/Appellant shall file with the Board by mail or in person one (1) copy of a written brief specifying the issues being appealed and including supporting rationale. Briefs shall be submitted on 8 ½ by 11 inch paper and shall not exceed ten (10) typed double-spaced pages.
  - 3) Within sixty (60) days after receipt of Respondent/Appellant's brief, the staff of the Board, as Appellee, shall submit a written brief in response to the brief of Respondent/Appellant.
  - 4) The Board, in its discretion for good cause shown, may grant upon written request one (1) enlargement of the time prescribed by these rules for doing any act, but the Board will not enlarge the time for filing notice of appeal.
  - 5) If a Respondent/Appellant fails to file his brief within the time provided by this Rule or within the time as extended, the appeal may be dismissed on motion of the Appellee or upon the Board's own initiative. If the Appellee fails to file its brief as required, such brief if later filed may be stricken from the record on motion of Respondent/Appellant or by a motion of the Board. If the Appellee fails to file a brief, it will not be heard at oral argument except by permission of the Board.
  - 6) Appeals of Board Hearing Panel decisions shall be scheduled for hearing by the Full Membership of the Board at the first available Board meeting following receipt of the reply brief of the staff of the Board as Appellee.
- B. *Appeal Hearing before the Full Membership of the Board.* Appeals of a decision of the Board Hearing Panel shall be heard before at least a quorum of the Full Membership of the Board – seven (7) members of the Board, including at least three (3) RNs and two (2) LPNs.
- 1) Appeals before the Full Membership of the Board shall be conducted on the record of the hearing before the Board Hearing Panel. The Full Membership of the Board shall not receive any new evidence nor shall it retry the appealed case. Arguments shall be directed solely to issues identified in the appeal and shall not introduce new evidence, testimony, or witnesses.
  - 2) Respondent/Appellant and Appellee shall each be allotted twenty (20) minutes to present arguments why the decision of the Board Hearing Panel should be

overturned or affirmed, unless otherwise ordered by the Board.

Respondent/Appellant may reserve a portion of his allotted time for rebuttal. A party is not obligated to use all the time allotted, and the Board may terminate the argument when in its judgment further argument is unnecessary.

- 3) Respondent/Appellant is entitled to open and conclude the argument.
- 4) Parties will not be permitted to read at length from briefs or records.
- 5) The Full Membership of the Board may, in its discretion, advise the parties of points upon which it desires to hear argument.
- 6) Members of the Full Membership of the Board participating in the appeal hearing may ask questions of either party related to issues identified in the appeal.
- 7) Board members who participated in the Board Hearing Panel which decided the underlying case at issue in an appeal of that decision shall recuse themselves from participation in the appeal hearing of that matter.

*C. Board Decision.*

- 1) The Full Membership of the Board may:
  - (a) Affirm the decision of the Board Hearing Panel;
  - (b) Affirm a portion of the decision of the Board Hearing Panel and remand the case to the Board Hearing Panel for reconsideration of a portion of the order;
  - (c) Affirm a portion of the decision of the Board Hearing Panel and overturn a portion of the decision of the Board Hearing Panel; or
  - (d) Overturn the decision of the Board Hearing Panel.
- 2) Although the Full Membership of the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order. A copy of such order shall be sent to Respondent/Appellant via certified mail at his last known address or served personally upon Respondent. The decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent shall become final thirty (30) days after signed by the Executive Director unless within said period the Respondent appeals the decision to the Chancery Court as provided by law.

*Rule 1.11 Appeal of Decision of Full Membership of the Board.* An appeal from a decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent/Appellant be in accordance with MS ST § 73-15-31(10).

*Rule 1.12 Computation of Time.* In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, a Sunday, a legal holiday as set forth in statute, or any other day when the office of the Board is in fact closed, whether with or without legal authority, in which event the period

runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the Board's office is closed.

## **Part 2825 Chapter 2: Public Records Requests**

### *Rule 2.1 Making a request for public records.*

- A. Any person wishing to inspect or copy public records of the Board should make the request in writing on the Board's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:
  - 1) Name of requestor;
  - 2) Address of requestor;
  - 3) Other contact information, including telephone number and any e-mail address;
  - 4) Identification of the public records adequate for the public records officer or designee to locate the records; and
  - 5) The date and time of day of the request.
- B. If the requestor wishes to have copies of the records made instead of simply inspecting them, he should so indicate and make arrangements to pay for copies of the records or a deposit. Standard black and white photocopies will be provided at twenty-five (25) cents per page.
- C. A form is available for use by requestors at the office of the public records officer and on-line at [www.msbn.ms.gov](http://www.msbn.ms.gov).

### *Rule 2.2 Processing of public records requests – General.*

- A. *Providing access.* The Board acknowledges that “providing access to public records is a duty” and that “any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record” in accordance with these policies. MS ST § 25-61-1 and 25-61-5. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.
- B. *Acknowledging receipt of request.* Within seven (7) business days of receipt of the request, the public records officer will do one or more of the following:
  - 1) Make the records available for inspection or copying;
  - 2) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
  - 3) Provide a reasonable estimate of when records will be available in; or
  - 4) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and

provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

- 5) Deny the request, stating the reason for the denial in writing.
- C. *Consequences of failure to respond.* If the Board does not respond in writing within seven (7) business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.
- D. *Records exempt from disclosure.* Some records are exempt from disclosure, in whole or in part. If the Board believes that a record is exempt from disclosure and should be withheld, the public records officer will deny the request in writing as set out in Rule 2.2 (B) (5) above, stating the specific exemption. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.
- E. *Inspection of records.*
- 1) Consistent with other demands, the Board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he wishes the public body to copy.
  - 2) The requestor must claim or review the assembled records within thirty (30) days of the Board's notification to him that the records are available for inspection or copying. The public body will notify the requestor in writing of this requirement and inform the requestor that he should contact the public body to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty (30)-day period or make other arrangements, the Board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.
- F. *Providing copies of records.* After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.
- G. *Providing records in installments.* When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.
- H. *Completion of inspection.* When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that

the Board has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

- I. *Closing withdrawn or abandoned request.* When the requestor either withdraws the request or fails to fulfill his obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the Board has closed the request.
- J. *Later discovered documents.* If, after the Board has informed the requestor that it has provided all available records, the Board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

*Rule 2.3 Processing of public records requests – Electronic records.*

- A. *Requesting electronic records.* The process for requesting electronic public records is the same as for requesting paper public records.
- B. *Providing electronic records.* When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the public body and is generally commercially available, or in a format that is reasonably translatable from the format in which the public body keeps the record. Costs for providing electronic records are governed by Rule 2.5.
- C. *Customized access to data bases.* With the consent of the requestor, the Board may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. The Board may charge the actual cost for such customized access.

*Rule 2.4 Exemptions.* The Public Records Act, as well as other statutes and court decisions, provide that a number of types of documents are exempt from public inspection and copying. In addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure.

- A. Requestors should be aware that all records of the investigation and all patient charts, records, emergency room records or any other document that may have been copied shall be kept confidential and shall not be subject to discovery or subpoena, see MS ST § 73-15-31.
- B. Requestors should be aware of the following exemptions, outside the Mississippi Public Records Act, that restrict the availability of some documents held by the Board for inspection and copying:
  - 1) Academic records exempt from public access, see MS ST § 37-11-51.
  - 2) Appraisal records exempt from access, see MS ST § 31-1-27.

- 3) Archaeological records exempt from public access, see MS ST § 39-7-41.
  - 4) Attorney work product, examination, exemption, see MS ST § 25-1-102.
  - 5) Birth Defects Registry, see MS ST § 41-21-205.
  - 6) Bureau of vital statistics, access to records, see MS ST § 41-57-2.
  - 7) Charitable organizations, registration information, exemption from public access, see MS ST § 79-11-527.
  - 8) Concealed pistols or revolvers, licenses to carry, records, exemption, see MS ST § 45-9-101.
  - 9) Confidentiality, ambulatory surgical facilities, see MS ST § 41-75-19.
  - 10) Defendants likely to flee or physically harm themselves or others, see MS ST § 41-32-7.
  - 11) Environmental self-evaluation reports, public records act, exemption, see MS ST § 49-2-71.
  - 12) Hospital records, Mississippi Public Records Act exemption, see MS ST § 41-9-68.
  - 13) Individual tax records in possession of public body, exemption from public access requirements, see MS ST § 27-3-77.
  - 14) Insurance and insurance companies, risk based capital level requirements, reports, see MS ST § 83-5-415.
  - 15) Judicial records, public access, exemption, see MS ST § 9-1-38.
  - 16) Jury records exempt from public records provisions, see § 13-5-97.
  - 17) Licensure application and examination records. Exemption from Public Records Act, see MS ST § 73-52-1.
  - 18) Medical examiner, records and reports, see MS ST § 41-61-63.
  - 19) Personnel files exempt from examination, see MS ST § 25-1-100.
  - 20) Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see MS ST § 79-23-1.
  - 21) Workers' compensation, access to records, see MS ST § 71-3-66.
  - 22) Records subject to privilege, such as Attorney/Client, Physician/Patient, etc.
- C. When any person files or submits documents with the Board which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.
- D. Any document filed with the Board which contains trade secrets or confidential commercial or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such by the filer on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential. Upon request to

inspect or copy any document so designated, the Board shall notify the person who filed the document. Thirty (30) days after such notice, the document will be made available for public inspection or copying unless the filer shall have obtained a court order protecting such records as confidential pursuant to MS ST § 25-61-9. Any person filing documents with the Board shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. The Board shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will the Board bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

*Rule 2.5 Costs of providing public records.*

- A. *Costs for paper copies.* MS ST § 25-61-7(1) reads as follows: "Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records."
  - 1) A requestor may obtain standard black and white photocopies for twenty-five (25) cents per page and color copies for fifty (50) cents per page.
  - 2) Before the Board begins to make the copies, the requestor must pre-pay all reasonably estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records in an installment before providing that installment.
- B. *Costs for electronic records.* The cost of electronic copies of records shall be twenty (20) dollars, transmitted either electronically or via digital media device.
- C. *Costs of mailing.* The Board may also charge actual costs of mailing, including the cost of the shipping container.
- D. *Payment.* Payment may be made electronically via the Board's website, by certified check, or by money order to the Board.
- E. *Charges for searching, reviewing and redacting.* The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task. The Board may require payment in advance for all costs before providing copies or access to records.

*Rule 2.6 Review of denials of public records.*

- A. *Petition for internal administrative review of denial of access.* Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.
- B. *Consideration of petition for review.* The public records officer must promptly provide the petition and any other relevant information to the Board's Executive Director. The Executive Director will immediately consider the petition and either affirm or reverse the denial within two (2) business days following the Board's receipt of the petition, or within such other time as the Board and the requestor mutually agree to.
- C. *Review by the Ethics Commission.* Pursuant to MS ST § 25-61-13, if the Board denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at [www.ethics.state.ms.us](http://www.ethics.state.ms.us).
- D. *Judicial review.* Any person whose request for public records was denied may institute a suit in the chancery court of Hinds County, seeking to reverse the denial, as set forth in MS ST § 25-61-13.



## **Part 2825      Rules of Procedure**

### **Part 2825      Chapter 1: Disciplinary Proceedings**

Rule 1.1 Scope. The following Rules of Procedure apply to all Registered Nurses (RNs), Licensed Practical Nurses (LPNs), Advanced Practice Registered Nurses (APRNs), and Certified Clinical Hemodialysis Technicians (CCHTs) licensed by the Mississippi Board of Nursing (hereinafter, “the Board”) and all other persons under the jurisdiction of said Board.

Rule 1.2 Definitions. For the purpose of Part 2825, Chapter 1 only, the following terms have the meanings indicated:

- A. “Board” means the Mississippi Board of Nursing.
- B. “Mississippi Nursing Practice Law” means Sections 73-15-1, et seq., of the Mississippi Code of 1972, Annotated.
- C. “Licensee” means any individual licensed to practice by the Board as a Registered Nurse, Licensed Practical Nurse, Advanced Practice Registered Nurse, or Certified Clinical Hemodialysis Technician in the State of Mississippi.
- D. “Respondent” means a licensee or applicant against whom the Board has initiated a disciplinary proceeding.
- E. “Complaint Counsel” means the attorney retained by the Board to prosecute licensees pursuant to the Mississippi Nursing Practice Law.
- F. “Executive Director” means the chief executive officer or other designee employed by the Board to run the day to day operations of the Board.
- G. “Case Review Committee” means an inter-departmental committee of Board staff assembled for the purpose of determining whether to pursue disciplinary action against a licensee or applicant.
- H. “Informal Conference” means an informal review or meeting at any time prior to the Board entering any order with respect to the complaint between the case review committee or Board and the Respondent or legal representative to fully explore the issues involved in the complaint and to facilitate the disposition of the complaint.
- I. “Board Hearing Panel” means the three-member panel of the Board designated to hear disciplinary proceedings. Members of the Board shall be designated to sit on a Board Hearing Panel on a rotating basis.
- J. Masculine terms used in this Chapter shall also be deemed to include the feminine.

Rule 1.3 Investigations.

- A. Upon receipt of a complaint concerning a nurse’s compliance with standards of conduct or the laws and regulations governing the practice of nursing, the Board investigative

staff, with advice and consultation from the legal staff, shall make an initial determination as to whether the information justifies further investigation. A case may be dismissed without further investigation based on a determination of either:

- 1) Lack of jurisdiction; or
  - 2) No violation of the Mississippi Nursing Practice Law.
- B. An investigation may be initiated by the Board either:
- 1) In response to a written complaint or adverse information received by the Board;  
or
  - 2) Based on information independently developed by the investigative staff of the Board.
- C. During an investigation, the investigative staff may interview and take the statements of witnesses and licensees. During the interview of a licensee, the investigative staff shall inform the licensee of the nature and purpose for the investigation and, if requested, provide licensee with a copy of any written complaint provided that:
- 1) Any identifying information of any patient shall be removed, and/or
  - 2) If anonymity has been requested all identifying data of the complainant shall be removed.
  - 3) Disclosure of the complaint may not impair, impede, or compromise the efficacy or integrity of the investigation of the complaint.

#### Rule 1.4 Results of Formal Investigation.

- A. Upon completion of the formal investigation, the Case Review Committee shall determine whether there is reasonable cause to believe that a violation exists of the Mississippi Nursing Practice Law and/or the laws, rules and regulations governing the practice of nursing.
- B. If the complaint does not warrant the issuance of a formal complaint, the Board:
- 1) Shall dismiss the complaint; and
  - 2) May notify the Complainant and Respondent of the decision.
- C. If a complaint is not dismissed, the complaint may be resolved by a consent order or other informal disposition and/or formal complaint.

#### Rule 1.5 Informal Proceedings.

- A. At any time, any matter before the Board may be resolved through informal proceedings by stipulation, agreed settlement, or agreed order of dismissal. Any proposed settlement or agreement must be approved by the Hearing Panel upon a majority vote of those qualified to vote, and must be approved further by the Respondent, upon a knowing and intentional waiver by the Respondent of his right to a hearing. This process may occur at any time prior to the Board entering any order with respect to the complaint. Informal

proceedings may be conducted in person via informal conference, by attorney, or by electronic, telephonic, or written communication.

- B. Informal Conferences include an informal review or meeting between the Case Review Committee, Board or Board designee or Board Hearing Panel and the Respondent or Respondent's legal representative to fully explore the issue(s) involved in the complaint and to facilitate the disposition of a complaint. No prejudice shall be attached to the Respondent or licensee for failure to attend an informal conference.
- 1) Respondent shall have a right to be represented by an attorney of record. At any time during the informal settlement conference, should Respondent choose to obtain representation by an attorney and advises staff of such choice, the conference will be discontinued.
  - 2) Respondent and staff participation in the conference is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case. Respondent will be expected to answer questions concerning the allegations contained in the complaint or formal charges and to cooperate fully with the Case Review Committee.
  - 3) Exchange of information may take place during the Informal Conference.
  - 4) If the parties to an Informal Conference are unable to reach a mutually agreeable Agreed Order and the matter is to proceed to a hearing before the Board Hearing Panel, the parties may agree in writing by stipulation to the following:
    - (a) Any undisputed claims, facts, testimony, documents or issues; and
    - (b) Evidence to be introduced without objection.
- C. No Board member is presumed to be biased and shall not be excused from participating in the adjudication and deliberation of a case or action based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for resolution of a pending complaint or disciplinary or licensure action.

#### Rule 1.6 Commencement of Disciplinary Proceedings.

- A. If a complaint is not resolved informally or the Board determines that a complaint warrants the issuance of a formal complaint, Board staff may commence disciplinary proceedings by filing formal charges. Electronic signatures shall be permissible on a formal complaint.
- B. The Respondent shall be notified of the hearing at least fifteen (15) days in advance of the date set for the hearing. The notice of hearing shall set forth the charges and allegations against Respondent in sufficient detail so as to provide full disclosure and notice of all violations of the Nursing Practicing Act and its implementing rules and regulations.
- C. The Board's staff shall serve the Complaint and Notice of Hearing on Respondent by:
- 1) Certified mail, postage pre-paid, to the last known address of the licensee;

- 2) Personal service; or
  - 3) When personal service of process by certified mail or personal service of process cannot be effected, by publication of a notice of hearing for three (3) successive weeks in the newspaper published in the county in which the Respondent last practiced or in the county in which the Respondent last resided according to the records of the Board, the date of hearing to be no less than ten (10) days after the last date of the published notice.
- D. The Respondent may file a response to the notice of hearing, but is not required to do so. Any written response to the charges must be filed with the Board ten (10) days in advance of the date set for the hearing on the complaint.
- E. The Respondent may waive a hearing on the notice and complaint. Such waiver of the right to a hearing must be in writing, signed by the Respondent, and filed with the Board.
- F. Formal charges may be resolved by agreement of the parties at any time.
- G. All pleadings, motions, or other papers permitted or required to be filed with the Board in connection with a pending disciplinary proceeding shall be filed by personal delivery at the Board or by certified mail to the office of the Board.
- H. Following service of a Complaint and Notice of Hearing pursuant to this Rule, a Respondent who is represented by legal counsel with respect to the disciplinary proceeding shall personally or through such counsel, give written notice to the Board of the name, address, and telephone number of such counsel. Following receipt of proper notice of representation, all further notices, pleadings, subpoenas, orders, or other process related to the proceeding shall be served on Respondent through the designated counsel of record until such time as the a withdrawal of counsel is filed with the Board.

Rule 1.7 Pre-Hearing Procedures.

- A. Continuances. Hearings shall be held before the Board Hearing Panel at the time and place designated in the Complaint and Notice of Hearing unless the Board grants a continuance. A motion for a continuance must be filed with the Board at least fifteen (15) days prior to the scheduled hearing or upon a showing of good cause at any time prior to the hearing.
- 1) No more than two (2) continuances of the hearing will be granted without the approval of the Board or Board's designee for good cause.
  - 2) A request for continuance, including to retain counsel, submitted less than five (5) days prior to the hearing may be made only under unusual circumstances. In such event, a request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.
- B. Subpoenas. For the purpose of disciplinary hearings, the Board acting by and through its legal staff may subpoena persons and papers on its own behalf and on behalf of a Respondent.

- 1) Before the Board will issue any subpoena on behalf of a Respondent, the Respondent shall file with the Board a written request for the issuance of said subpoenas, identifying with certainty the identity and address of all persons to be subpoenaed and/or a concise description of the records to be subpoenaed with the identity and address of the custodian of said records.
- 2) All requests for the issuance of subpoenas shall be filed with the Board at least fifteen (15) days before the scheduled hearing date. The Board shall not be responsible for the timely receipt of said subpoenas issued after the aforementioned deadline.
- 3) All subpoenas issued by the Board either on its own behalf or on behalf of a Respondent shall be effected by certified mail or by personal service of process.
- 4) All subpoenas issued by the Board shall be returnable within ten (10) days to either the Board or other location as specified in the subpoena.
- 5) The Board shall charge a Respondent a reasonable fee, not to exceed \$25.00 per subpoena, for preparation and mailing of subpoenas.

C. Disclosure.

- 1) Upon written request by a Respondent or his counsel, Complaint Counsel of the Board shall disclose and permit Respondent or his counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of the Board or the existence of which is known to the Complaint Counsel:
  - (a) Names and addresses of all witnesses proposed to be called in Complaint Counsel's case in chief, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.
  - (b) Copies of any written or recorded statement of Respondent and the substance of any oral statement made by Respondent.
  - (c) Copies of any criminal record of Respondent, if proposed to be used.
  - (d) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.
  - (e) All records, documents, physical evidence, or photographs which may be offered as evidence.
  - (f) Any exculpatory material concerning the Respondent.
- 2) The Board shall charge a Respondent a reasonable fee, not to exceed fifty cents (\$0.50) per page, payable in advance of delivery of copied documents. Copies printed on both sides (front and back) shall be considered as two (2) pages for copy charge purposes.
- 3) The Board may deny disclosure authorized by this Rule:
  - (a) If it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary embarrassment

resulting from such disclosure which outweighs any usefulness of the disclosure to Respondent or his counsel.

(b) In accordance with applicable statutory regulations providing exemptions, including but not limited to:

1. MS ST § 25-61-12 and

2. MS ST § 73-52-1.

4) If Respondent requests disclosure under this Rule, Respondent shall within two (2) days after disclosure by Complaint Counsel, permit Complaint Counsel to inspect, copy, or photograph the following information and material which is in the possession, custody, or control of Respondent or his counsel or the existence of which is known to Respondent or his counsel:

(a) Names and addresses of all witnesses proposed to be called in Respondent's defense, together with a copy of the contents of any statement, written, recorded, or otherwise preserved, of each such witness.

(b) All records, documents, physical evidence, or photographs which may or shall be offered as evidence in Respondent's defense.

(c) Any written reports or statements of experts, if proposed to be offered as evidence in connection with the particular case.

5) No depositions shall be taken in preparation for matters to be heard before the Board.

D. *Amendment of Pleadings.* Complaint Counsel may amend a Complaint and Notice of Hearing that has been duly served upon Respondent at any time prior to the scheduled hearing date, provided the amendment is for the purpose of correcting a clerical error or clarifying facts set forth in the Complaint and Notice of Hearing. Complaint Counsel may amend a Complaint and Notice of Hearing to add additional charges or counts provided the amended Complaint and Notice of Hearing is served upon Respondent not less than fifteen (15) days before the scheduled hearing date or by mutual agreement of the parties.

E. *Pre-Hearing Motions.* All pre-hearing motions shall be filed not later than ten (10) days prior to the scheduled hearing. Said motion shall be accompanied by a memorandum setting forth a succinct explanation of the grounds on which relief is sought. Any such memorandum may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or Board designee. A motion may be accompanied by an affidavit(s) as necessary to establish facts alleged in support of the motion. Within ten (10) days of the filing of any motion, opposing counsel may file a memorandum in opposition to the initial motion. Any such memorandum in opposition may not exceed five (5) typed pages unless permission to exceed that limit is requested and granted in advance by the Board or designee

- F. Procedural Decisions. The Board designee will be fully authorized to make all necessary procedural decisions on behalf of the Board, including, but not limited to, matters related to continuances, time extensions, amendments, pre-hearing conferences.

Rule 1.8 Formal Hearing

- A. Formal hearings are conducted pursuant to MS ST § 73-15-31 before a Board Hearing Panel that consists of three (3) Board members, an alternate Board member, and a representative of the Mississippi Attorney General's Office who serves as the presiding officer for each hearing. All testimony and other proceedings shall be recorded by a certified court reporter who shall be retained by the Board.
- B. At a formal disciplinary hearing, Complaint Counsel and Respondent and/or Respondent's counsel shall have opportunity to present evidence on all issues of fact and argument on all issues of law, to call, examine, and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the matter.
- C. The Board Hearing Panel is not bound by strict rules of evidence, but all determinations made by the Board Hearing Panel must be based upon clear and convincing evidence. The representative of the Mississippi Attorney General's Office, in his capacity as presiding officer of the Board Hearing Panel, shall rule on all evidentiary questions.
- D. All hearings are open to the public pursuant to the Mississippi Open Meetings Law, MS ST § 25-41-1, et seq. In all disciplinary hearings before the Board Hearing Panel, the record of the case shall include:
- 1) The Complaint and Notice of Hearing;
  - 2) All pleadings, motions, and rulings issued;
  - 3) Evidence received or considered at the hearing;
  - 4) Offers of proof, objections, and rulings thereon; and
  - 5) The Board's order or other disposition made by the Board.
- E. Disciplinary hearings before the Board shall be conducted in the following order:
- 1) Opening statements
  - 2) Complaint Counsel's case in chief
  - 3) Respondent's case in chief
  - 4) Complaint Counsel's rebuttal
  - 5) Closing statements
- F. Questioning of witnesses shall be conducted in the following order:
- 1) Direct examination
  - 2) Cross examination
  - 3) Redirect examination

- G. The hearing officer shall have the authority to preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures due process and an efficient and orderly hearing and resolution of the case.
- H. The Board Hearing Panel shall render its Order, setting forth Findings of Fact, Conclusions of Law, and Order. Although the Board Hearing Panel's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order. A copy of such order shall be sent to Respondent via certified mail at his last known address or served personally upon Respondent. The decision of the Board Hearing Panel revoking, suspending, or otherwise disciplining Respondent's license shall become final thirty (30) days after the Executive Director signs the Final Order of the Board Panel unless within said period the Respondent appeals the decision to the Full Membership of the Board as provided by Rule 1.10.
- I. If the Board Hearing Panel finds in its discretion the public health, safety or welfare imperatively requires emergency action, it may order the decision revoking, suspending, or otherwise disciplining Respondent's license be immediately applied to Respondent's license.

Rule 1.9 Appeal of Administrative Denial. The procedural requirements enumerated in Rules 1.1 through 1.11 shall also apply to an appeal of an Administrative Denial of Licensure put forth by any applicant for licensure as a RN, LPN, APRN, or CCHT. Any applicant who wishes to appeal an Administrative Denial shall deliver a Notice of Appeal of Administrative Denial to the Board either personally at or via certified mail to the Board's office. The applicant must file his Notice of Appeal of Administrative Denial of Licensure in writing along with a \$50.00 appeal fee within thirty (30) days of notice of Board-ratification of the Administrative Denial of Licensure. Any appeal of an Administrative Denial will be set for hearing before a Board Hearing Panel at the next available hearing date on the Board's calendar after the Board receives the applicant's Notice of Appeal of Administrative Denial.

Rule 1.10 Appeal of Board Hearing Panel Decision to Full Membership of the Board. Appeals from any decision of a Board Hearing Panel shall be made to the Full Membership of the Board, pursuant to MS ST § 73-15-31, except as set forth in MS ST § 93-11-153, 93-11-163, and 37-101-291.

- A. Procedures for Appeal of Board Hearing Panel Decision: Any Respondent who appeals a decision of the Board Hearing Panel must file his Notice of Appeal of the Board Hearing Panel's decision in writing along with a fifty dollar (\$50.00) appeal fee within thirty (30) days of the Executive Director signing the Final Order of the Board Panel. Notice of the Hearing Panel's decision occurs on the date the order of the Board Hearing Panel is mailed via certified mail to or personally served upon the Respondent.



- 1) Within seven (7) days after filing his Notice of Appeal, the Respondent/Appellant shall serve on the court reporter a written request for the transcript of the hearing that resulted in the appealed decision. Respondent/Appellant shall be responsible for the cost of the preparation of said transcript. In his request for the transcript, Respondent/Appellant shall request that the court reporter notify the Board's legal staff when the transcript has been completed. Respondent/Appellant shall simultaneously file with the Board a copy of the written request for said transcript.
  - 2) Within sixty (60) days after the court reporter mails a copy of the transcript to Respondent/Appellant, Respondent/Appellant shall file with the Board by mail or in person one (1) copy of a written brief specifying the issues being appealed and including supporting rationale. Briefs shall be submitted on 8 ½ by 11 inch paper and shall not exceed ten (10) typed double-spaced pages.
  - 3) Within sixty (60) days after receipt of Respondent/Appellant's brief, the staff of the Board, as Appellee, shall submit a written brief in response to the brief of Respondent/Appellant.
  - 4) The Board, in its discretion for good cause shown, may grant upon written request one (1) enlargement of the time prescribed by these rules for doing any act, but the Board will not enlarge the time for filing notice of appeal.
  - 5) If a Respondent/Appellant fails to file his brief within the time provided by this Rule or within the time as extended, the appeal may be dismissed on motion of the Appellee or upon the Board's own initiative. If the Appellee fails to file its brief as required, such brief if later filed may be stricken from the record on motion of Respondent/Appellant or by a motion of the Board. If the Appellee fails to file a brief, it will not be heard at oral argument except by permission of the Board.
  - 6) Appeals of Board Hearing Panel decisions shall be scheduled for hearing by the Full Membership of the Board at the first available Board meeting following receipt of the reply brief of the staff of the Board as Appellee.
- B. *Appeal Hearing before the Full Membership of the Board.* Appeals of a decision of the Board Hearing Panel shall be heard before at least a quorum of the Full Membership of the Board – seven (7) members of the Board, including at least three (3) RNs and two (2) LPNs.
- 1) Appeals before the Full Membership of the Board shall be conducted on the record of the hearing before the Board Hearing Panel. The Full Membership of the Board shall not receive any new evidence nor shall it retry the appealed case. Arguments shall be directed solely to issues identified in the appeal and shall not introduce new evidence, testimony, or witnesses.
  - 2) Respondent/Appellant and Appellee shall each be allotted twenty (20) minutes to present arguments why the decision of the Board Hearing Panel should be

overturned or affirmed, unless otherwise ordered by the Board.

Respondent/Appellant may reserve a portion of his allotted time for rebuttal. A party is not obligated to use all the time allotted, and the Board may terminate the argument when in its judgment further argument is unnecessary.

- 3) Respondent/Appellant is entitled to open and conclude the argument.
- 4) Parties will not be permitted to read at length from briefs or records.
- 5) The Full Membership of the Board may, in its discretion, advise the parties of points upon which it desires to hear argument.
- 6) Members of the Full Membership of the Board participating in the appeal hearing may ask questions of either party related to issues identified in the appeal.
- 7) Board members who participated in the Board Hearing Panel which decided the underlying case at issue in an appeal of that decision shall recuse themselves from participation in the appeal hearing of that matter.

*C. Board Decision.*

- 1) The Full Membership of the Board may:
  - (a) Affirm the decision of the Board Hearing Panel;
  - (b) Affirm a portion of the decision of the Board Hearing Panel and remand the case to the Board Hearing Panel for reconsideration of a portion of the order;
  - (c) Affirm a portion of the decision of the Board Hearing Panel and overturn a portion of the decision of the Board Hearing Panel; or
  - (d) Overturn the decision of the Board Hearing Panel.
- 2) Although the Full Membership of the Board's decision may be announced immediately following deliberations, the Board shall be provided adequate time for preparation of the written order. A copy of such order shall be sent to Respondent/Appellant via certified mail at his last known address or served personally upon Respondent. The decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent shall become final thirty (30) days after signed by the Executive Director unless within said period the Respondent appeals the decision to the Chancery Court as provided by law.

*Rule 1.11 Appeal of Decision of Full Membership of the Board.* An appeal from a decision of the Full Membership of the Board revoking, suspending, or otherwise disciplining Respondent/Appellant be in accordance with MS ST § 73-15-31(10).

*Rule 1.12 Computation of Time.* In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless that day is a Saturday, a Sunday, a legal holiday as set forth in statute, or any other day when the office of the Board is in fact closed, whether with or without legal authority, in which event the period

runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the Board's office is closed.

## **Part 2825 Chapter 2: Public Records Requests**

### *Rule 2.1 Making a request for public records.*

- A. Any person wishing to inspect or copy public records of the Board should make the request in writing on the Board's request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:
  - 1) Name of requestor;
  - 2) Address of requestor;
  - 3) Other contact information, including telephone number and any e-mail address;
  - 4) Identification of the public records adequate for the public records officer or designee to locate the records; and
  - 5) The date and time of day of the request.
- B. If the requestor wishes to have copies of the records made instead of simply inspecting them, he should so indicate and make arrangements to pay for copies of the records or a deposit. Standard black and white photocopies will be provided at twenty-five (25) cents per page.
- C. A form is available for use by requestors at the office of the public records officer and on-line at [www.msbn.ms.gov](http://www.msbn.ms.gov).

### *Rule 2.2 Processing of public records requests – General.*

- A. Providing access. The Board acknowledges that “providing access to public records is a duty” and that “any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record” in accordance with these policies. MS ST § 25-61-1 and 25-61-5. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.
- B. Acknowledging receipt of request. Within seven (7) business days of receipt of the request, the public records officer will do one or more of the following:
  - 1) Make the records available for inspection or copying;
  - 2) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
  - 3) Provide a reasonable estimate of when records will be available in; or
  - 4) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and

provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

- 5) Deny the request, stating the reason for the denial in writing.
- C. Consequences of failure to respond. If the Board does not respond in writing within seven (7) business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.
- D. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the Board believes that a record is exempt from disclosure and should be withheld, the public records officer will deny the request in writing as set out in Rule 2.2 (B) (5) above, stating the specific exemption. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.
- E. Inspection of records.
  - 1) Consistent with other demands, the Board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he wishes the public body to copy.
  - 2) The requestor must claim or review the assembled records within thirty (30) days of the Board's notification to him that the records are available for inspection or copying. The public body will notify the requestor in writing of this requirement and inform the requestor that he should contact the public body to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty (30)-day period or make other arrangements, the Board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.
- F. Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.
- G. Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.
- H. Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that

the Board has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

- I. Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the Board has closed the request.
- J. Later discovered documents. If, after the Board has informed the requestor that it has provided all available records, the Board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

Rule 2.3 Processing of public records requests – Electronic records.

- A. Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.
- B. Providing electronic records. When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the public body and is generally commercially available, or in a format that is reasonably translatable from the format in which the public body keeps the record. Costs for providing electronic records are governed by Rule 2.5.
- C. Customized access to data bases. With the consent of the requestor, the Board may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. The Board may charge the actual cost for such customized access.

Rule 2.4 Exemptions. The Public Records Act, as well as other statutes and court decisions, provide that a number of types of documents are exempt from public inspection and copying. In addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure.

- A. Requestors should be aware that all records of the investigation and all patient charts, records, emergency room records or any other document that may have been copied shall be kept confidential and shall not be subject to discovery or subpoena, see MS ST § 73-15-31.
- B. Requestors should be aware of the following exemptions, outside the Mississippi Public Records Act, that restrict the availability of some documents held by the Board for inspection and copying:
  - 1) Academic records exempt from public access, see MS ST § 37-11-51.
  - 2) Appraisal records exempt from access, see MS ST § 31-1-27.

- 3) Archaeological records exempt from public access, see MS ST § 39-7-41.
  - 4) Attorney work product, examination, exemption, see MS ST § 25-1-102.
  - 5) Birth Defects Registry, see MS ST § 41-21-205.
  - 6) Bureau of vital statistics, access to records, see MS ST § 41-57-2.
  - 7) Charitable organizations, registration information, exemption from public access, see MS ST § 79-11-527.
  - 8) Concealed pistols or revolvers, licenses to carry, records, exemption, see MS ST § 45-9-101.
  - 9) Confidentiality, ambulatory surgical facilities, see MS ST § 41-75-19.
  - 10) Defendants likely to flee or physically harm themselves or others, see MS ST § 41-32-7.
  - 11) Environmental self-evaluation reports, public records act, exemption, see MS ST § 49-2-71.
  - 12) Hospital records, Mississippi Public Records Act exemption, see MS ST § 41-9-68.
  - 13) Individual tax records in possession of public body, exemption from public access requirements, see MS ST § 27-3-77.
  - 14) Insurance and insurance companies, risk based capital level requirements, reports, see MS ST § 83-5-415.
  - 15) Judicial records, public access, exemption, see MS ST § 9-1-38.
  - 16) Jury records exempt from public records provisions, see § 13-5-97.
  - 17) Licensure application and examination records. Exemption from Public Records Act, see MS ST § 73-52-1.
  - 18) Medical examiner, records and reports, see MS ST § 41-61-63.
  - 19) Personnel files exempt from examination, see MS ST § 25-1-100.
  - 20) Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see MS ST § 79-23-1.
  - 21) Workers' compensation, access to records, see MS ST § 71-3-66.
  - 22) Records subject to privilege, such as Attorney/Client, Physician/Patient, etc.
- C. When any person files or submits documents with the Board which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.
- D. Any document filed with the Board which contains trade secrets or confidential commercial or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such by the filer on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential. Upon request to

inspect or copy any document so designated, the Board shall notify the person who filed the document. Thirty (30) days after such notice, the document will be made available for public inspection or copying unless the filer shall have obtained a court order protecting such records as confidential pursuant to MS ST § 25-61-9. Any person filing documents with the Board shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. The Board shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will the Board bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

Rule 2.5 Costs of providing public records.

- A. Costs for paper copies. MS ST § 25-61-7(1) reads as follows: “Except as provided in subsection (2) of this section, each public body may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records.”
  - 1) A requestor may obtain standard black and white photocopies for twenty-five (25) cents per page and color copies for fifty (50) cents per page.
  - 2) Before the Board begins to make the copies, the requestor must pre-pay all reasonably estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records in an installment before providing that installment.
- B. Costs for electronic records. The cost of electronic copies of records shall be twenty (20) dollars, transmitted either electronically or via digital media device.
- C. Costs of mailing. The Board may also charge actual costs of mailing, including the cost of the shipping container.
- D. Payment. Payment may be made electronically via the Board's website, by certified check, or by money order to the Board.
- E. Charges for searching, reviewing and redacting. The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task. The Board may require payment in advance for all costs before providing copies or access to records.

Rule 2.6 Review of denials of public records.

- A. Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition must include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.
- B. Consideration of petition for review. The public records officer must promptly provide the petition and any other relevant information to the Board's Executive Director. The Executive Director will immediately consider the petition and either affirm or reverse the denial within two (2) business days following the Board's receipt of the petition, or within such other time as the Board and the requestor mutually agree to.
- C. Review by the Ethics Commission. Pursuant to MS ST § 25-61-13, if the Board denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at [www.ethics.state.ms.us](http://www.ethics.state.ms.us).
- D. Judicial review. Any person whose request for public records was denied may institute a suit in the chancery court of Hinds County, seeking to reverse the denial, as set forth in MS ST § 25-61-13.